Supreme Court, U.S.
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No. 91-500

In The

Supreme Court of the United States

October Term, 1991

AMIDIO MATTEI, JOSEPH MATTEI, and DOMENIC J. MATTEI,

Petitioners,

v.

LABORERS COMBINED FUNDS OF WESTERN PENNSYLVANIA, as agent for PETER J. LIVOLSI and ALBERT W. BETLER, Trustees ad Litem, LABORERS DISTRICT COUNCIL OF WESTERN PENNSYLVANIA WELFARE AND PENSION FUNDS, THE CONSTRUCTION INDUSTRY ADVANCEMENT PROGRAM OF WESTERN PENNSYLVANIA, and LABORERS DISTRICT COUNCIL OF WESTERN PENNSYLVANIA and its affiliated local unions,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Pennsylvania

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a final judgment based on a state statute, having been affirmed on appeal, can be collaterally attacked on subject matter jurisdiction grounds in a second proceeding where a United States Court of Appeals determined during the pendency of the appeal in the first proceeding that the state statute was preempted, where the Court of Appeals decision was expressly called to the attention of the state appellate court and the appellants, where the appellants failed to argue the preemption issue during the first proceeding, and where the preemption issue was only raised years later after execution proceedings were initiated to enforce the final judgment.

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STATEMENT OF THE CASE

This petition for a writ of certiorari filed by the Petitioners, Amidio Mattei and Domenic J. Mattei[1] (hereinafter collectively "the Matteis"), is part of the Matteis' second attempt, through appellate proceedings, to have the judgment entered against them on January 13, 1986, overturned. The original lawsuit against the Matteis was commenced in the Court of Common Pleas of Allegheny County, Pennsylvania, on March 1, 1984, when the Respondents[2] filed their complaint in assumpsit seeking recovery from the Matteis of pension, welfare, industry and dues payments owed to the Respondents by Mattei Brothers, Inc. (hereinafter ("MBI") pursuant to a certain collective bargaining agreement. Liability was asserted against the Matteis as "employers" under the Pennsylvania Wage Payment and Collection Law, 43 P.S. §260.1 et seq. (hereinafter "the WPCL") because of the Matteis' status as "officers and/or agents" of MBI.

On April 6, 1984, the Matteis answered the Respondents' complaint and denied any liability. Although the Matteis included new matter in their answer, they did not assert that the WPCL had been preempted by the

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[1] The non-jury verdict and judgment in this case were against Amidio Mattei and Domenic J. Mattei only; the trial court found in favor of Joseph Mattei (Petition for Writ of Certiorari, Appendix, p. A17).

[2] The Laborers Combined Funds of Western Pennsylvania is a Pennsylvania nonprofit corporation with no parent or subsidiaries. The remaining Respondents are not corporate entities.

Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 et seq. (hereinafter "ERISA") or that the Court of Common Pleas lacked subject matter jurisdiction over the lawsuit.

A trial was held on October 11, 1985. The relevant facts were not seriously disputed. On October 27, 1982, MBI had entered into a collective bargaining agreement (hereinafter "the Agreement") with the Laborers District Council of Western Pennsylvania which represented eight local unions. Pursuant to the Agreement, MBI was required to make, for the benefit of employees covered under the Agreement, certain monthly payments to the Respondents for union dues, welfare fund contributions, pension fund contributions, and contributions to the industry advancement or safety educational programs. MBI failed to make timely payments to the Respondents with the result that for the period from May 1, 1983, through November 15, 1983, the principal amount due was $37,398.12.

During this time period, Amidio Mattei served as president of MBI and Domenic J. Mattei served as secretary-treasurer. The Matteis contended that MBI's bookkeeper had embezzled some $374,000.00, with the result that MBI had been unable to pay the Respondents the amounts owed pursuant to the Agreement. MBI eventually filed a bankruptcy petition.

On October 16, 1985, the trial court rendered a non-jury verdict in favor of the Respondents and against the Matteis in the amount of $44,247.65. The Matteis thereafter filed exceptions to the verdict. Neither the issue of preemption nor the lack of subject matter jurisdiction was raised in the exceptions. The exceptions were dismissed by an Order dated December 30, 1985; and on January 13,

1986, judgment was entered. The Matteis appealed to the Superior Court of Pennsylvania.

While the appeal was pending, the United States Court of Appeals for the Third Circuit rendered its Opinion in *McMahon v. McDowell*, 794 F.2d 100 (3rd Cir.), *cert. denied*, 479 U.S. 971 (1986), in which it held that the WPCL was preempted by ERISA to the extent that the WPCL related to employee benefit plans. In their Brief For Appellees filed with the Superior Court on July 16, 1986, the Respondents expressly brought the *McMahon* decision to the attention of the Superior Court and of the Matteis. In a footnote, the Respondents stated[3]:

> The Matteis did not raise below, and have not raised on this appeal, the issue of whether the WPCL has been preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§1001 et seq. ("ERISA"). Since they failed to raise this issue in the lower court, it cannot be considered for the first time on appeal. *Amalgamated Cotton Garment and Allied Industries Fund v. Dion*, 341 Pa. Super 12, 491 A.2d 123 (1985) (appellant attempted to raise the issue of the WPCL's preemption by ERISA for the first time on appeal). Thus, the Third Circuit's recent decision in *McMahon v. McDowell*, ___ F.2d ___ (3rd Cir., No. 85-3570, filed June 24, 1986) is irrelevant to this Court's consideration of the pending appeal.

[3] In the second round of proceedings, the Court of Common Pleas noted the prior reference to *McMahon* and quoted the footnote in its Opinion (Petition for Writ of Certiorari, Appendix, p. A9)

The Matteis took no action in response to being advised of the *McMahon* decision. They did not file a reply brief with the Superior Court in which they challenged the Respondents' assessment of the applicability of the *McMahon* decision. Nor did they file a reply brief arguing that the trial court's judgment was void *ab initio* because, despite their initial failure to raise the issue, the trial court had lacked subject matter jurisdiction.

On December 17, 1986, the Superior Court affirmed the judgment of the trial court. *Laborers Combined Funds of Western Pennsylvania v. Mattei*, 359 Pa. Super. 399, 518 A.2d 1296 (1986) (Petition for Writ of Certiorari, Appendix, pp. A16-A27). Although the Matteis could have sought reargument before the Superior Court or could have petitioned the Supreme Court of Pennsylvania for the allowance of an appeal, therein raising the question of whether the judgment was void *ab initio*, they failed to do so. Nor did they take any other action to challenge the validity of the judgment against them until nearly three years after the Superior Court's affirmance.

In November of 1989, after the Respondents had initiated execution proceedings, including the scheduling of a sheriff's sale of certain real estate, the Matteis presented to the Court of Common Pleas of Allegheny County, Pennsylvania, a petition for a rule to show cause why the judgment should not be opened and/or stricken and for a stay of the execution proceedings. The Matteis claimed that the judgment was void, citing as authority the Third Circuit's Opinion in *McMahon v. McDowell, supra.*

On November 28, 1989, the Matteis' petition was denied (Petition for Writ of Certiorari, Appendix, p. A38). The Matteis appealed to the Pennsylvania Superior Court for a second time. On February 26, 1991, the Superior Court affirmed. *Laborers Combined Funds of Western Pennsylvania v. Mattei*, 402 Pa. Super. 486, 587 A.2d 354 (1991) (Petition for Writ of Certiorari, Appendix, pp. A2-A7). The Matteis petitioned the Pennsylvania Supreme Court for the allowance of an appeal, but on August 8, 1991, that Court denied their petition (Petition for Writ of Certiorari, Appendix, p. A1). The Matteis have now filed a Petition for Writ of Certiorari with this Honorable Court.

SUMMARY OF THE ARGUMENT

Review on a writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. Cases having an isolated significance only to the litigants, and being of no public importance, should not be reviewed. The Matteis' efforts to raise a preemption issue in a second collateral proceeding, after knowingly having failed to raise it in their first appeal, is not of public importance; and certiorari should not be granted.

No writ of certiorari should be issued in any event, because the Pennsylvania Superior Court's decision, which the Pennsylvania Supreme Court declined to review, is proper and correct. Decisions recognizing federal preemption do not render final state court judgments void for lack of subject matter jurisdiction simply because such judgments were entered after Congress enacted its

preemptive legislation. The courts have repeatedly rejected such a contention. In also rejecting this contention, the Superior Court applied criteria adopted by this Court for determining the retroactive applicability of new decisions, such as *McMahon*. The Superior Court correctly analyzed this case under those criteria. Regardless of those criteria, however, retroactivity in civil cases must be limited by the need for finality and the bar of res judicata.

A final judgment on the merits precludes the parties from relitigating issues that were or could have been raised in that action. This preclusion includes jurisdictional questions, such as the one raised by the Matteis. The Matteis were not privileged to remain silent with respect to the question of preemption and raise it in a subsequent collateral attack on the judgment against them. Their Petition for Writ of Certiorari should accordingly be denied.

ARGUMENT

I. There Are No Special Or Important Reasons For Granting Certiorari In This Case.

As clearly delineated in Rule 10 of the U.S. Sup. Ct. Rules, 28 U.S.C.A., review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. In *Rice v. Sioux City Memorial Park, Inc.*, 349 U.S. 70, 74 (1955) (decided under the similar provisions of former Rule 19 of the U.S. Sup. Ct. Rules), this Court elaborated on the criteria under which the Court determines whether a particular case merits consideration:

> A federal question raised by a petitioner may be "of substance" in the sense that abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants. [citations omitted]. "Special and important reasons" imply a reach to a problem beyond the academic or the episodic.

No special or important reasons exist for granting certiorari in the present case.

Over four years ago, the Matteis elected not to petition the Pennsylvania Supreme Court for the allowance of an appeal from the Superior Court's first decision affirming the judgment against them. At the time, the Matteis had been advised of the *McMahon* decision, but had failed to make any arguments based thereon. The question of whether the Matteis, who knowingly failed to raise the preemption issue in their first appeal, can raise that issue years later in a second proceeding collaterally attacking the original judgment may be of importance to the Matteis, but it is not of importance to the public.

II. There Is No Need To Grant Certiorari In Any Event Because The Superior Court's Decision Is Correct

The Superior Court's decision in this case is correct and is not in conflict with any decision of this Court. The Matteis' contention that ERISA vitiated the state court's subject matter jurisdiction and rendered the judgment against them void *ab initio* is without merit.

The Superior Court's decision in this case is the first to deal with the effect of *McMahon* on existing judgments under the WPCL. However, analogous decisions relating to other areas of federal preemption clearly demonstrate that decisions recognizing federal preemption do not render state court judgments void for lack of subject matter jurisdiction even though such judgments were entered after Congress had enacted its preemptive legislation. In *McCarty v. McCarty*, 453 U.S. 210 (1981), this Court determined that federal law preempted state community property laws to the extent that the community property laws authorized state courts to divide military retirement pay. Following this decision, challenges were raised to prior property distribution decisions on the basis that the courts rendering these decisions lacked subject matter jurisdiction with respect to military pay. These challenges were rejected, most notably by this Court in *Sheldon v. Sheldon*, 456 U.S. 941 (1982) where the Court dismissed an appeal from the Court of Appeals of California for want of a substantial federal question. As the Ninth Circuit noted in *White v. White*, 731 F.2d 1440 (9th Cir. 1984), this Court's summary dismissal of the appeal for want of a substantial federal question operated as a decision on the merits as to the challenges presented in the statement of jurisdiction, including the challenge to the Court of Appeals' refusal to void the prior state court judgment. Accordingly, the Ninth Circuit concluded that this Court's action in *Sheldon v. Sheldon* foreclosed the argument that *McCarty* rendered contrary state court judgments void for lack of subject matter jurisdiction. *White v. White, supra. See also Armstrong v. Armstrong*, 696 F.2d 1237 (9th Cir.), *cert. denied*, 464 U.S. 933 (1983).

Other challenges to existing judgments based upon *McCarty* were equally unsuccessful. *See Erspan v. Badgett*, 659 F.2d 26 (5th Cir. 1981), *cert. denied*, 455 U.S. 945 (1982); *Wilson v. Wilson*, 667 F.2d 497 (5th Cir.), *cert. denied*, 458 U.S. 1107 (1982); *Segrest v. Segrest*, 649 S.W.2d 610 (Tex.), *cert. denied*, 464 U.S. 894 (1983); *Camp v. Camp*, 142 Cal. App.3d 217, 191 Cal. Rptr. 45 (1983); *Fellers v. Fellers*, 125 Cal. App. 3d 254, 178 Cal. Rptr. 35 (1981); *Whenry v. Whenry*, 98 N.M. 737, 652 P.2d 1188 (1982); *Rodriguez v. Rodriguez*, 133 Ariz. 88, 649 P.2d 291 (1982); *Marriage of Vinson*, 57 Or. App. 355, 644 P.2d 635, *review denied*, 293 Or. 456, 650 P.2d 928 (1982); *Duke v. Duke*, 98 Nev. 148, 643 P.2d 1205 (1982).

As the trial court and Superior Court recognized, many of these courts rejected the retroactive application of *McCarty* by analyzing the three considerations recognized by this Court in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), as bearing upon the issue of retroactivity. *See e.g. In re Marriage of Sheldon*, 124 Cal. App.3d 371, 177 Cal. Rptr. 380 (1981), *appeal dismissed for want of a substantial federal question*, 456 U.S. 941 (1982); *Segrest v. Segrest, supra; Whenry v. Whenry, supra.* In *Northern Pipeline*, this Court considered the following three criteria: (1) whether the decision established a new principle of law, either by overruling clear past precedent on which litigants may have relied or by deciding an issue of first impression whose resolution was not clearly foreshadowed; (2) whether retrospective application would further or retard the purpose and effect of the decision; and (3) whether retrospective application would bring about substantial inequitable results

in individual cases. *See also Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971).

With respect to the present case, nothing in the *McMahon* decision itself suggests that it is to be given retroactive application to void all prior WPCL judgments entered, after the enactment of ERISA, against corporate officers for their corporations' failure to pay contributions to employee benefit plans. Moreover, the Superior Court correctly applied the criteria set forth in *Northern Pipeline* and *Chevron Oil* in refusing to apply *McMahon* retroactively to void the judgment against the Matteis.

In the first place, the *McMahon* decision overruled clear past precedent upon which litigants were unquestionably relying in filing WPCL claims against corporate officers. Only three years before *McMahon*, the Third Circuit had concluded that the WPCL was not preempted by ERISA. In *Carpenters Health and Welfare Fund v. Kenneth R. Ambrose, Inc.*, 727 F.2d 279, 282, n.5 (3rd Cir. 1983), the Court had stated that the preemption argument was "without merit."

The second criterion also favors a non-retroactive application of *McMahon* in this case. The purpose of the preemption provisions in ERISA is clearly to allow for the uniform operation of the comprehensive framework designed by Congress to regulate the field of employee benefit plans. *McMahon* advanced that goal by finding the WPCL to be preempted. That goal is not advanced, however, by voiding existing judgments already entered pursuant to the WPCL. As the Superior Court correctly noted, quoting from the trial court, "While the instant

type of suit could conceivably frustrate that [ERISA] procedure in the future, the overturning of judgments years later when no other procedure could then be followed not only would not further the plan of ERISA, but would hinder it further." (Petition for Writ of Certiorari, Appendix, p. A6).

Finally, consideration of potential inequitable results strongly mitigates against retroactive application of *McMahon*. The trial court and the Superior Court properly recognized that there would be inequities which would arise both from any general retroactive application of *McMahon* to final judgments and from any retroactive application of *McMahon* to this case.

With respect to the former, the trial Court and Superior Court correctly cited the potential disharmony and prejudice which could arise from the vacation of existing judgments which had resolved labor and management strife. The trial court and Superior Court also correctly recognized the potential inequity and the immense burden which would be placed upon the judicial system if relitigation were permitted with respect to all WPCL pension and welfare plan judgments. *Cf. In re Marriage of Sheldon, supra.*

Moreover, the peculiar facts of this case make relief from the prior judgment totally inequitable and inappropriate. Specifically, the Matteis were apprised of the *McMahon* decision while the case against them was still pending on appeal. They could have, and should have, raised this issue then. *Cf. James B. Beam Distilling Co. v. Georgia*, ___ U.S. ___, 111 S.Ct. 2439 (1991) (applying recent decision retroactively to claims not yet barred);

Schreiber v. Republic Intermodal Corp., 473 Pa. 614, 375 A.2d 1285 (1977) (applying recent decision retroactively to a pending case); *In re Marriage of Sheldon, supra* (allowing limited retroactivity to certain cases on appeal). Instead, although obviously aware of the *McMahon* decision, they elected not to raise the issue while their case was pending. They waited for more than three years after being advised of the *McMahon* decision to take any action. It would be grossly unfair to the Respondents at this late date to allow the Matteis to raise an issue they could have raised while their case was still pending on appeal. Their conduct should be viewed as a waiver of any right the Matteis might otherwise have had to vacate the judgment. The Superior Court correctly applied the *Northern Pipeline* and *Chevron Oil* criteria.

While this Court's recent decision in *James B. Beam Distilling Co. v. Georgia, supra,* may have called into question the continued vitality of the *Northern Pipeline* and *Chevron Oil* criteria in determining non-retroactivity with respect to certain pending or pursuable claims, Justice Souter's Opinion announcing the judgment of the Court emphasizes the inappropriateness of retroactivity with respect to cases in which a final judgment has been entered.

> Of course, retroactivity in civil cases must be limited by the need for finality [citation omitted]; once suit is barred by res judicata or by statutes of limitation or repose, a new rule cannot reopen the door already closed.

James B. Beam Distilling Co. v. Georgia, ___ U.S. at ___, 111 S.Ct. at 2446 (Opinion of Souter, J.). In the present case,

the Superior Court was asked to apply decisions establishing ERISA's preemptive nature to a final judgment rendered years earlier. The Superior Court correctly refused to do so.

III. Principles Of Res Judicata Also Support The Superior Court's Decision

Although the Superior Court did not expressly rely upon principles of res judicata, such principles clearly support the correctness of the decision. In *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981), this Court stated:

> A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. [citations omitted]. Nor are the res judicata consequences of a final, unappealed judgment on the merits altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case. [citations omitted]. . . . [A]n "erroneous conclusion" reached by the court in the first suit does not deprive the defendants in the second action "of their right to rely upon the plea of *res judicata*. . . . A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause [of action]."

This Court has applied this rationale in a situation where the lower court's jurisdiction was conferred by a statute which was later held to be unconstitutional:

> The remaining question is simply whether respondents, having failed to raise the [jurisdictional] question in the proceeding to which they were parties and in which they could have raised it and had it finally determined, were privileged to remain quiet and raise it in a subsequent suit. Such a view is contrary to the well-settled principle that *res judicata* may be pleaded as a bar, not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceeding, "but also as respects any other available matter which might have been presented to that end."

Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371, 378 (1940).

In the present case the Matteis failed to raise the *McMahon* jurisdictional issue in the first proceeding, where they could have had it finally determined. Consistent with the reasoning in *Chicot*, they were not privileged to remain silent and raise it in a subsequent suit. Their silence in this case is even more egregious because they were unquestionably aware of the decision upon which they now base their argument. Principles of res judicata bar their belated attempt to raise the issue in a second proceeding.

The Matteis cite *Kalb v. Feuerstein*, 308 U.S. 433 (1940) to support their claim that they can collaterally attack the judgment against them. The Matteis' reliance upon *Kalb* is misplaced, however. *Kalb* involved the self-executing automatic stay provisions of the former Bankruptcy Act. These provisions contained explicit prohibitions against the exercise of jurisdiction by all courts other than the bankruptcy court. This Court concluded that Congress

had plenary power over bankruptcy matters and had exercised that power to limit the jurisdiction of state and federal courts over the person or property of debtors under the bankruptcy law. This Court further concluded that Congress had manifested its intention that the debtor be protected even if the issue of jurisdiction was not contested or even raised by the debtor in the state or federal court proceeding.

In the present case there is no statutory prohibition against the exercise of state court jurisdiction with respect to the provisions of the WPCL. All that has happened as a result of the generally worded preemption provision in ERISA, 29 U.S.C. § 1144(a), is that the WPCL no longer provides a scheme of state substantive law with respect to employee benefit plans. And even this conclusion was unclear enough to result in an initial determination that the WPCL was not preempted at all by ERISA. *See Carpenters Health and Welfare Fund v. Kenneth R. Ambrose, Inc., supra.* The ERISA preemption provision is clearly not the type of express prohibition against the exercise of jurisdiction which was found in the former Bankruptcy Act. Nor does it expressly manifest a Congressional intent to protect litigants from state court proceedings where they fail to raise the preemption issue until after a final judgment has been entered. *Cf. International Longshoremen's Ass'n., AFL-CIO v. Davis,* 476 U.S. 380 (1986) (Congressional intent demonstrated to foreclose state court's jurisdiction to adjudicate). *Kalb* is therefore inapplicable to the present case. The partial preemption of the WPCL by ERISA does not render WPCL judgments void *ab initio* for lack of subject matter jurisdiction.

CONCLUSION

The Pennsylvania Superior Court correctly determined that *McMahon* should not be applied to void the final judgment previously rendered in this case, and the Pennsylvania Supreme Court correctly refused to review that determination. No special or important reasons exist for reviewing those decisions. Accordingly, the Matteis' petition seeking a writ of certiorari should be denied.

Respectfully submitted,

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